THE HONOURABLE SRI JUSTICE V. ESWARAIAH

W.P. No.2553 of 2006

Date: 13-02-2006

Between:

M/s VLG Mallesham & company,

Aproprietary concern represented by

Its proprietor Ramanaiah

S/o Mallesham, aged 80 years,

Occ: business, R/o. Peddapally, Karimnagar.

… Petitioner

And

M/s Indian Oil Corporation Limited

Represented by its Manager,

Narsapur House, Himayatnagar,
Hyderabad – 500 029 and others.

… Respondents

ORDER:

The petitioner is a retail outlet dealer dealing with the supply of (MS) petrol, (HSD) diesel and lubricants. He states that dealership was granted to him 35 years ago and he has been running the same without any violations whatsoever. While so, the respondents visited the said retail outlet and collected the samples of motor spirit from dispensing pump on 22-10-2005 and collected six samples, out of which, four samples were taken away by them and two samples were handed over the petitioner.

Later, show cause notice dated 19-11-2005 was issued informing the petitioner that the sample motor spirit drawn from the nozzle of the dispensing pump on 22-10-2005 was analysed and it failed to meet the specifications in respect of research Octane number test. In support of the said contention, a

copy of the test report was also enclosed.

The petitioner filed a reply dated 29-11-2005 to the show cause notice and thereafter he filed W.P. No.27033 of 2005 questioning the said show cause notice in initiating the action without sending the second sample for analysis as illegal and arbitrary. The said writ petition was disposed of on 20-12-2005 directing the petitioner to address the respondents expressing its willingness to get the sample left with it analysed through a recognized laboratory and on receiving the same, the 2nd respondent was directed to take necessary steps for getting the sample analysed. It is stated that pursuant to the directions of this Court, the petitioner expressed its willingness to get the samples left with it analyzed. While receiving the samples, the respondents have issued observation letter dated 04-01-2006 is as follows:

> *Retention samples of M/s. VLG. Mallesam & Co., Paddapalli are scrutinized and following are the observations:*

1. *There are two samples. The labels and seals are intact.*
2. *Outer seals are opened and inner aluminium containers were examined.*
3. *One aluminium container showed few pin holes and out of which, the product was leaking through one hole.*
4. *Second aluminum container showed few pin hole marks, but no leak was observed.*

As against the said observation, the petitioner got issued a legal notice dated 08-01-2006 for which a reply dated 25-01-2006 was also sent through the counsel of the respondents. Thereafter, the impugned order dated 03-02-2006 has been passed stating that the retention sample could not be tested since the sample was not “intact”. It was found that there were pinholes on the retention sample tins, which were not in existence when the samples

were handed over to the petitioner for safe custody. Therefore, the explanation of the petitioner was not found satisfactory and the dealership of the petitioner agreement dated 29-03-1973 has been terminated under clause Nos. 4, 27,44 and 58 of the agreement.

The learned counsel appearing for the petitioner argued that the order 03-02-2006 of the respondent in terminating the dealership of the petitioner without getting the sample tested and analysed in the recognized laboratory is illegal, arbitrary, contrary and contempt of the judgment dated
20-12-2005 passed by this Court.

On the other hand, learned counsel appearing for the respondents submits that when the samples have been tampered, there is no need to test the samples. Further stated that an alternative remedy of appeal is available to the petitioner before the appellate authority, which shall be disposed of within 90 days from the date of appeal.

In view of the aforesaid facts and circumstances of the case and when the fact remains that an alternative remedy of appeal is available to the petitioner, it is not just and proper to express any opinion on the contentions raised by the learned counsel on either side.

Having regard to the facts and circumstances of the case, the writ petition is dismissed with a liberty to the petitioner to avail an alternative remedy of appeal before the appellate authority and file an application to grant stay.
If any such application is filed, the appellate authority is directed to dispose of the same within four weeks from the date of filing of the application and thereafter the appeal itself shall be disposed of within the stipulated time of 90 days.

The Writ Petition is accordingly dismissed. No order as to costs.

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V. ESWARAIAH, J

Date: 13-02-2006

LSK